

REMARKS

The Examiner rejects claim 30 under 35 U.S.C. § 101; rejects claims 1-7, 10-15, 17-21, 24-28, and 30 under 35 U.S.C. § 102(e) as unpatentable over U.S. Patent No. 6,999,918 to Ma et al. ("Ma"); and rejects claims 8, 9, 16, 22, 23, and 29 under 35 U.S.C. § 103(a) as being obvious over Ma in view of U.S. Patent No. 6,024,571 to Reneger ("Reneger"). Applicants respectfully traverse this rejection.

Claim 30 was rejected under 35 U.S.C. § 101 as allegedly directed to non-statutory subject matter. Applicants respectfully traverse this rejection.

In rejecting claim 30, the Examiner states that claim 30 is: "drawn to a 'program' *per se* as recited in the preamble and as such is/are non-statutory subject matter." (Office Action, page 2.) Applicants disagree with the Examiner. Claim 30 is drawn to a computer-readable medium, not a program *per-se*. Section 2106 of the MPEP discusses the difference between a program *per se* and a computer-readable medium. It states:

Similarly, computer programs claimed as computer listings *per se*, i.e., the descriptions or expressions of the programs, are not physical "things." They are neither computer components nor statutory processes, as they are not "acts" being performed. Such claimed computer programs do not define any structural and functional interrelationships between the computer program and other claimed elements of a computer which permit the computer program's functionality to be realized. In contrast, a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory. See *Lowry*, 32 F.3d at 1583-84, 32 USPQ2d at 1035. Accordingly, it is important to distinguish claims that define descriptive material *per se* from claims that define statutory inventions.

(MPEP 2106, emphasis added). Claim 30 recites "a computer-readable medium containing programming instructions for execution by a processor." Claim 30 is thus clearly recited as a computer-readable medium encoded with a computer program, and is thus statutory.

For at least this reason, the rejection of claim 30 under 35 U.S.C. § 101 is improper and should be withdrawn.

Claims 1-7, 10-15, 17-21, 24-28, and 30 stand rejected under 35 U.S.C. § 102(e) as unpatentable over Ma and claims 8, 9, 16, 22, 23, and 29 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Ma in view of Reneger.

Applicants submit herewith Declarations by the inventors, Jayadev Billa and Francis Kubala, under 37 C.F.R. § 1.131. The Declarations establish reduction to practice of the invention claimed in the present application prior to September 2002, the filing date of Ma. Applicants submit that the Declarations by Jayadev Billa and Francis Kubala act to remove the Ma patent as a reference against the claims of the present application.

For at least the foregoing reasons, Applicant respectfully requests that the rejection of claims 1-7, 10-15, 17-21, 24-28, and 30 under 35 U.S.C. § 102(e) based on Ma and the rejection of claims 8, 9, 16, 22, 23, and 29 under 35 U.S.C. § 103(a) based on Ma and Reneger be reconsidered and withdrawn.

Conclusion

In view of the foregoing remarks, Applicants respectfully request the Examiner's reconsideration of the application and the timely allowance of the pending claims.

As Applicants' remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicants' silence as to certain assertions by the Examiner in the Office Action or certain requirements that may be applicable to such rejections (e.g., whether a reference constitutes prior art, motivation to combine references, assertions regarding dependent claims, etc.) is not a concession by Applicants that such assertions are accurate or such requirements have been met, and Applicants reserve the right to analyze and dispute these assertions/requirements in the future.

Application No. 10/685,566
Amendment dated July 11, 2007
Reply to Office Action of March 12, 2007

Docket No.: BBNT-P01-087

Applicants believe no fee is due with this request other than as indicated on the enclosed Petition for Extension of Time. However, if a fee is due, please charge our Deposit Account No. 18-1945, under Order No. BBNT-P01-087 from which the undersigned is authorized to draw.

Dated: July 11, 2007

Respectfully submitted,

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